GOVERNMENT OF MYSORE

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT (LABOUR)

Labour Dispute : Industrial Dispute between the workmen and the management of Mandya National Paper Mills, Belagola, Mandya District.

Award of the Labour Court, Bangalore—published.

Read the following papers :

(1) Letter No. 166-67, dated 21st November 1966, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 21st day of November 1966.

Present

Shri P. T. Kadkol, B.SC., LL.B.,

Presiding Officer.

REFERENCE No. 32 OF 1966.

Between

I Party—Workmen represented by the General Secretary, Mysore National Paper Mills' Staff Association, Belagola Post, Mandya District.

and

II Party—The Management of Mandya National Paper Mills, Belagola, Mandya District.

Reference :—Government Order No. LMA 564 LLD 65, dated 18th March 1966.

AWARD

The Government of Mysore being of opinion that an Industrial Dispute exists between the workmen and the management of M/s. Mandya National Paper Mills Ltd., Belagola, Mandya District, have referred it to this court for adjudication under Section 10(1) (c) of

the Industrial Disputes Act, 1947 by their Order No. LMA 564 LLD 65, dated 18th March 1966 setting out the following points of dispute for adjudication :—

> "Is the Management of Mandya National Paper Mills Ltd., Bangalore, justified in terminating the services of the 3 workers *viz.*,
>
> (i) Sri A. Satyanarayana Iyer, Accounts Clerk,
> (ii) K. Subramani, Temporary Stenographer, and
> (iii) Gulam Mohamed, Clerk, Sales Section ?
>
> If not, to what reliefs are the workers entitled to ?

2. The cause of the aggrieved workmen has been sponsored by the Mandya National Paper Mills Staff Association. Belagola, which is a registered Trade Union. This Union, as representing the Workmen, is the First Party and the Management of the Mandya National Paper Mills, is the Second Party, in this proceeding. Mr. Bhagavan has appeared for the Union and M/s. B. R. Puttananjappa and B. Gopalaiah have appeared for the Management.

3. The Reference relates to the termination of the services of three employees. The Union has contended in the statement of claims that the termination of their services are not preceded by any enquiry ; it lacks *bona fides* on the part of the Management ; principles of natural justice have been violated ; the three employees, who were active members of the Union, have been victimised ; the termination also amounts to unfair labour practice ; the vacancies caused by the termination of the services of these employees have been filled up by the Management, by appointing three aged and retired persons in their places ; the termination lacks in substance and has been made with ulterior motives ; hence the orders of termination may be set aside and the three employees be directed to be reinstated with full back wages and continuity of service, etc.

4. The Mandya National Paper Mills are situated in Belagola, in Mandya District. The Management of the Mills has an administrative head office at Bangalore. The three employees under reference, were employed in the administrative head office, at Bangalore. These facts alleged by the Management, are admitted by the Union.

5. The Management of the Mills has submitted its statement of objections through its Secretary. The contentions raised are these :

The administrative head office at Bangalore where the three employees were employed, is an establishment governed by the Mysore Shops and Establishments Act, 1961 ; it has also been registered under the said Act ; hence the justifiability or otherwise of the termination of their services and the reliefs, if any, they are entitled

to, require to be determined under the said Act and not under the Industrial Disputes Act; hence this Court has no jurisdiction to adjudicate upon this dispute; the employees in the administrative head office are not entitled to become the members of the First Party Union; hence the Union has no *locus standi* to represent the three employees under reference; the other employees in the administrative head office have not sponsored or supported the cause of the three employees under reference; hence there is no industrial dispute empowering the Government to make this reference and this court has no jurisdiction to adjudicate upon it; even if it be held that the dispute is an industrial dispute, and the termination of the three employees is not justified, the maximum relief that they would be entitled to would be as provided by the Shops and Establishments Act, 1961; moreover, the services of the three employees were terminated for justifiable reasons; the services of Satyanarayana Iyer were terminated because of his indifference to the work assigned to him and because of his trade activities with lower cadre employees, in the office premises and during office hours on account of which the management lost confidence in him; the employee K. Subramanya was relieved in pursuance of his earlier letter of resignation; the employee Gulam Mohamad's service was terminated because he was not evincing sufficient interest in the work assigned to him; the termination of the services of these three employees is a discharge simpliciter and is *bona fide* and for justifiable reasons; all allegations made by the Union to the contrary are false; hence this reference should be rejected etc.

6. On these pleadings, the following additional issues were framed and set down for hearing:—

1. Does the Second Party prove that the provisions of the Industrial Disputes Act, 1947 do not apply to its establishment at Bangalore?

2. Does it prove that the three concerned workmen have been terminated for justifiable reasons?

3. Does it prove the charges against them?

4. Are the charges such, if proved, as to warrant the termination of the three employees?

5. Does the Second Party prove that the establishment is governed by the Shops and Establishments Act and the only reliefs that the employees are entitled to, is a maximum of six months' wages and not reinstatement, in any case?

6. Does it prove that it made an offer to pay the wages and it was rejected by the employees?

7. Are the aggrieved employees entitled to reinstatement with or without back wages ?

8. What Award ?

Parties were directed to lead evidence with respect to all these issues and they have done so. The Management has examined seven witnesses (M.W. 1 to M.W. 7) and produced twelve documents marked Exhibits M. 1 to M. 12. The Union has examined three witnesses (W.W. 1 to W.W. 3) and has produced thirteen documents marked Exhibits W. 1 to W. 13. This is all the evidence in the case. I now proceed to discuss the evidence and record my findings on the issues formulated above.

7. It is a fact admitted on both hands that the Paper Mills are situated at Belagola and the administrative head office is situated at Bangalore. The Management has a set of certified Standing Orders for the employees and workmen actually working in the Mills at Belagola. It is stated for the Management and not denied by the Union that these standing orders are not applicable to the employees in the Bangalore Office and that the employees in the Bangalore Office are governed by the "Staff Service Rules" a copy of which has been produced at Exhibit M. 4.

8. The three employees concerned in this dispute are :—

1. A. Satyanarayana Iyer.
2. K. Subramanya.
3. Gulam Mohammad.

9. A. Satyanarayana Iyer joined the Bangalore Office on 12th October 1960, in purusance of the order of appointment dated 3rd October 1960 issued to him by the Management, as a clerk on a salary of Rs. 140 per month. The Order of appointment has been produced at Exhibit W. 4. In the first instance, he was appointed on probation for six months. His service, (as per Exhibit W. 4) were contracted to be governed by the rules and regulations that were then in force and such of them as would be introduced from time to time. It was also subject to termination with notice of one month on either side, and during the probationary period, was terminable without notice. It is after accepting these conditions, that Satyanarayana was taken in service by the Management. Then, he was confirmed in service and in his post, with effect from 13th April 1961, on a salary of Rs. 150 p.m. as per the order at Exhibit W. 5, issued to him on 6th July 1961. His salary was raised to Rs. 170 with effect from 1st March 1962, in the time scale of Rs. 150—10—250. "in appreciation of his work and loyalty" and in "celebration of the opening of the factory" (*vide* Exhibit W. 6, dated 2nd March 1962).

On 4th March 1963, his salary was further raised to Rs. 190 with effect from 1st March 1963 (*vide* Exhibit W. 7, dated 4th March 1963). Then on 2nd March 1964, his salary was further raised to Rs. 210 with effect from 1st March 1964, for "satisfactory and competent service" (*Vide* Exhibit W. 8). Then on 29th January 1965, the notice at Exhibit W. 1 was issued to him, stating that his services would not be required with effect from 1st February 1965 and informing him that he would be paid one month's salary in lieu of notice together with all Earned Leave salary due to him (*vide* Exhibit W. 1 and Exhibit M. 6). The reason for his termination, as stated at the hearing, is the confidential report dated 18th January 1965, given by the Accounts Officer, Mr. M. Raghavachar (M.W. 3) against him. The confidential report is at Exhibit M. 1. In purusance of the termination notice, Satyanarayana was relieved of his duties with effect from 1st February 1965.

10. K. Subramanya joined service under the Management as a steno-typist in the Accounts Section, on 1st September 1960 under a letter of appointment issued to him, but not produced in this case. When so serving, he tendered his resignation by his letter dated 27th June 1963 (*Vide* Page 2 of Exhibit M. 3). He sought permission to retire on medical grounds from 10th July 1963 and prayed for leave due to him from 2nd July 1963, till then. As admitted by him in his deposition (*Vide* para 3, W.W. 2) the Management informed him that his resignation had been accepted. But the Management could not relieve him as the audit of accounts had not yet been completed. So, Subramanya wrote the letter Exhibit M. 3 (Page 1) to the Management on 28th June 1963, seeking payment of Rs. 90 as the salary for 15 days leave on Medical grounds, which was sought by him but not granted to him as per "mutual agreement". After this, as admitted by Subramanya himself, the management inserted advertisements in the Newspapers calling for applications for the post of a steno-typist. Some applications were received in response to the advertisements. Some applicants also were interviewed, but none was selected. The Management wanted a steno-typist but none was available. So, it appears that, some agreement was reached between the management and Subramanya, as a result of which, the former issued an order to the latter on 6th July 1963 (*Vide* Exhibit M. 5) as under :—

> "You are hereby appointed as a temporary stenographer with effect from 15th July 1963 in our office, on a salary of Rs. 250 per month, until further orders".

Subramanya has admitted that when he tendered his resignation, his salary was Rs. 180 per month and under the letter Exhibit M. 5, it was raised to Rs. 250 per month. Then on 20th

November 1964, Subramanya wrote the letter, Exhibit M. 12, to the Management as under :—

> "I have completed one year and four months service on 15th November 1964. I request that my services may kindly be confirmed from 15th July 1964 and a reasonable grade may be fixed in the present employment".

On 25th January 1965, however, the Accounts Officer (M.W. 3) submitted his confidential report Exhibit M. 9 to the Management to the effect that as it was found possible to manage the work, with the help of existing steno-typists, Subramanya may be relieved of his post as asked by him in his letter of resignation. Thereafter on 29th January 1965 the Management issued him the termination notice (Exhibit M. 8) stating that his services were no longer required with effect from 1st February 1965 and that he would be paid one month's pay in lieu of notice together with all leave salary due to him. The Management also wrote him a letter on 30th January 1965 (Exhibit W. 2) regretting the circumstances which compelled it to sever its connection with him and assuring him of all assistance, if he required, to procure employment, elsewhere. Accordingly, the Management also relieved him of his post, with effect from 1st February 1965.

11. Gulam Mohammad joined service under the Management, as a clerk in the Sales Section on 26th October 1959. The letter of appointment has not been produced. His salary was fixed at Rs. 162 per month under the letter dated 4th March 1963 (Exhibit W. 9) and at Rs. 168 per month under the letter dated 2nd March 1964 (Exhibit W. 11). It appears that he wanted to quit the job and sought a certificate from the Management. The Management gave it to him on 31st May 1963 (Exhibit W. 10). The Sales Manager Mr. Chopra (M.W. 2) submitted a confidential report against him (Gulam Mohammad) on 20th January 1965 as per Exhibit M. 2. Hence the Management issued him the termination notice dated 29th January 1965 (*Vide* Exhibit M. 7) informing him that his services were not required with effect from 1st February 1965 and he would be paid one month's salary in lieu of notice together with all leave salary due to him. It also wrote to him the letter dated 30th January 1965 (Exhibit W. 3) regretting the circumstances that compelled it to sever its connection with him and assuring him all assistance for procuring employment elsewhere. It also issued him a certificate of good work on 1st February 1965 (Exhibit W. 12) and relieved him of his post. It may be noted here that in the order of reference, the name has been mentioned as Gulam Mohammad but his name is Gulam Ahmed.

12. It appears that the question of termination of the services of the three workmen under reference and another was discussed by

the Secretary with the Managing Director Mr. Korn and he directed or approved of the termination of their services under the Staff Service Rules. Exhibit M. 10 is the office order passed by the Secretary in this connection and it is dated 29th January 1965.

13. Exhibit M. 11 is the Registration of the Bangalore Office of the Management under the Shops and Commercial Establishments Act, 1961.

14. It appears that after the termination of their services, the three employees under reference approached the first party union and the union wrote to the Management on 3rd February 1965. Ex. W. 13 is the reply given by the Management to the Union on 6th February 1965. The Management has informed the Union, therein, that the services of the three employees under reference had been terminated under the terms of appointment and the Company's Staff Service Rules and all monies due to them had been paid.

15. This is all the documentary evidence in the case.

16. Admittedly, the services of the three employees under reference have been terminated by the Management, without issuing them any charges for misconduct and without holding any enquiry. The contention of the Management is that the termination of their services made by it, is an order of discharge simpliciter, and this order has been passed by it, in exercise of the right vesting in it under the contract of service and under Rule 21 of the Staff Service Rules. It is not denied by the Union that the employees concerned in this dispute are governed by the staff service rules. Hence, keeping aside the contention of the Management (for the present) that the provisions of the Industrial Disputes Act, 1947, cannot be invoked by the Union, for the decision of this dispute, in view of the fact that the management has been registered under the Shops and Commercial Establishments Act, 1961, I proceed to examine the case under the provisions of the Industrial Disputes Act, 1947.

17. The termination orders passed by the Management against the three employees in this case are very simple. All of them have been informed on 29th January 1965, that their services would no longer be required with effect from 1st February 1965 and they would be paid one month's salary in lieu of notice along with the earned leave salary due to them. These orders (Exhibits M. 6. M. 7 and M. 8) do not cast any reflection on the character, conduct or work of the three employees. Not only that, but the Management has regretted the circumstances under which it was compelled to sever connection with Subramanya and Gulam Mohammad (Exhibits W. 2 and W. 3) and assured them of all assistance to procure employments elsewhere. In addition, it has given two certificates to

Gulam Mohammad regarding his good work. *Prima facie*, therefore, the termination orders appear to be orders of discharge, pure and simple.

18. Rule 21 of the Staff Service Rules (Exhibit M. 4) provides as under :—

> "Except when otherwise agreed upon, the services of an employee, on confirmation, may be terminated after giving him/her one month's notice in writing or paying him/her a month's salary in lieu thereof. Such a notice shall not be necessary nor shall the employee be entitled to any salary in lieu of notice when his/her services are terminated for insubordination, breach of discipline, neglect of duty, grave misconduct, and for acts of violation of the service rules or for acts of violation of the service rules or for acts construed as offending the interests of the Company".

By reading this rule, which can be divided two parts, we find that the first part provides for a discharge of an employee, simpliciter, and the second part provides for termination on grounds of misconduct, etc., which, in other words, would mean dismissal of an employee. In the case on hand, the Management claims to have acted under the first part of this Rule.

19. At this stage, it is necessary to know the legal position. It has been fairly well settled by the decisions of various High Courts and the Supreme Court that an Industrial Court can go into the question of such a discharge, alleged to be a discharge simpliciter, if it is challenged before it, to find out whether such an order passed by the management has been passed in *bona fide* exercise of its rights as a management function or it smacks of *mala fides*, and is punitive in nature, or the Management has only acted under the relevant rule using it as a cloak to cover its act of victimisation or unfair labour practice or with some ulterior motive or for extraneous reasons. The Industrial Court is required to consider the reasons leading to or behind the order of termination. In Idu Ismail *Vs.* Sarangpur Cotton Manufacturing Co., Ltd., (1956 I LLJ 293) it has been laid down that if the certified standing orders of an establishment provide both for a dismissal for misconduct after an enquiry and the termination of service on notice or payment of wages in lieu thereof, the Management can very well proceed to exercise the latter power and authority, so long as what it does, is in good faith and not *mala fide*. Even in cases where the conduct of the workman amounts to misconduct, but the management finds that there is no sufficient evidence or material to prove it, it has a right to exercise the latter power, so long as it acts in good faith.

20. The recent decisions on this subject are :—

1. 1965 (1) LLJ 422 (Murugan Mills, Ltd., *Vs.* Industrial Tribunal) .
2. 1965 (I) LLJ 155 (Ahmadabad Sarangpur Mills *Vs.* Industrial Tribunal) .
3. 1963-64 24 Indian Factories Journal 472 (Tata Oil Mills Co., Ltd., *Vs.* Their Workmen) .

In Murugan Mills case, the Supreme Court has observed :—

> " The right of the employer to terminate the services of a workman under the Standing Orders by giving a Notice or by paying him wages in lieu of notice which amounts to a claim for " hire and fire " an employee, as the employer pleases and thus completely negative the security of service which has been secured to industrial employees through industrial adjudication was considered by the Labour Appellate Tribunal in 1951-2-LLJ 314 and the view taken therein has been approved in the decision of the Supreme Court in 1960-2-LLJ 222 and 1962-I-LLJ 374. Even in such a case the requirement of *bona fide* is essential. If the termination of service is a colourable exercise of power or as a result of victimisation or unfair labour practice, the Industrial Tribunal would have jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the Tribunal can go behind the order to find the reasons which led to the order and then consider for itself whether the termination is a colourable exercise of the power or was a result of victimisation or unfair labour practice... "

The principles laid down in Ahmadabad Sarangpur Mills case are the same as above. In Tata Oil Mills case the Supreme Court has held that if the Industrial Court is satisfied that the order is punitive, that it is *mala fide* or that it amounts to victimisation or unfair labour practice, it is competent to the Industrial Court to set aside the order in a proper case and direct reinstatement of the workman. It has also observed therein that, in some cases, the termination of the services of a workman may appear to the Industrial Court to be capricious or so unreasonably severe that an inference may reasonably be drawn that in terminating the services, the employer was not acting *bona fide* and the test always is whether the act of the employer is *bona fide* or not. In Orissa Cement Ltd., *Vs.* Their Workmen (1960—2 LLJ 91) it has been held that the party alleging *mala fides*, must prove it.

21. In view of this legal position, it is evident that the orders of termination passed by the Management against the three emplo-

yees under reference can be interfered with only if, the Management has acted *mala fide* or its orders are vitiated on any of the grounds mentioned in the Tata Oil Mills case, and the Murugan Mills case.

22. First I proceed to consider the cast of Satyanarayana Iyer. The termination order passed against him does not disclose why his services were terminated. In the statement of objections, the Management has given three reasons for terminating his services. They are :

1. He was indifferent to the work assigned to him ;
2. He was carrying on trade activities with lower cadre employees during working hours ;
3. The Management had lost confidence in him.

In his confidential report dated 18th January 1965 (Ex. M. 1), Raghavachar (M.W. 3) has complained that Satyanarayana Iyer's work was not at all satisfactory ; he was never returning from the Banks in time ; he did not improve inspite of instructions ; he was not co-operating with others, when his request that he or one of the other senior clerks should be promoted as Assistant Accountant was not acceeded and Parthasarathy Reddy was appointed to that post ; due to his indifference to the work assigned to him and his unwillingness to co-operate with others in the work, he was unable to extract work from him (Satyanarayana) ; Satyanarayana was having trade transactions with the members of subordinate staff in cloth and was recovering the dues from their salary while disbursing it ; etc.

23. Raghavachar has been examined by the Management as M.W. 3. He has sworn to all the facts mentioned by him in his report Ex.M. 1. In his cross-examination he has admitted that no memo or office order had been issued to Satyanarayana to return from the Banks by 2 P.M., he has not maintained any records in the office to show that Satyanarayana was returning from the Banks as late as 4 P.M. ; he has never made any written complaints to the Secretary regarding the late return of Satyanarayana from the Banks; it was true that he had once purchased one Terelyne cloth shirt length from Satyanarayana for which he did pay the price in cash, etc. A suggestion was made to him that he had not written and signed Ex.M. 1 on 18th January 1965 but had fabricated it later on and ante-dated it. He has flatly denied it.

24. Channayappa (M.W. 4) who was in the service of the Management as a gardner and who has left that job one year back, has stated that Satyanarayana had started a chit fund among 12 employees of the Bangalore office ; each employee was contributing

Rs. 5 to the fund every month; the very first draw come to him and he received Rs. 60 ; he handed over this amount of Rs. 60 to Satyanarayana and asked him to purchase one pair of gold ear-rings for his wife ; Satyanarayana purchased them and gave them to him ; when he tried to pledge the ear-rings to raise money, he was told that they were not of good gold at all and he could not raise any loan ; he returned the ear-rings to Satyanarayana in the office and complained about it to Raghavachar (M.W. 3). In his cross--examination he has admitted that it was true that Satyanarayana had started the chit fund at the request of all the concerned employees and for the benefit of all of them.

25. R. Mahamood Khan (M.W. 6) is a peon under the Management in the Bangalore Office. He too has spoken about the chit fund started by Satyanarayana. He has stated that every member was to pay his contribution to the Chit fund immediately on receiving the pay, and at that very spot. He has not been cross-examined.

26. Mahaboob Sab (M.W. 7) is another peon under the Management. He has stated that for Ramzan day, two years back, he had purchased cloth worth Rs. 100 on credit from Satyanarayana agreeing to pay the amount in monthly instalments of Rs. 10 each ; and he was paying Rs. 10 every month to Satyanarayana in the office itself, on receiving his pay. In his cross-examination he has stated that the cloth shop belongs to the father of Satyanarayana ; he had gone to that shop ; and on being told by Satyanarayana, his father had given him the cloth, on credit.

27. This is all the oral evidence led against Satyanarayana Iyer. He has examined himself as W.W. 1. He has stated that his father is running a cloth shop at Bangalore and he was living with his father in a portion of the same building in which the cloth shop was being run, at the material time. He has admitted that he had started the chit fund at the request of his colleagues and peons with the permission of one Mr. Belliyappa, who was the office Superintendent and who was also a member of the chit fund along with himself and others. Then he has admitted that one Mr A. K. N. Rao used to sit with himself at times and with another clerk at times, at the counter to disburse the salary to the employees. He has denied that he used to receive the chit fund contributions at the counter itself and has added that the members used to pay him their contribution, at the time convenient to them. He has then stated that Mahaboob Sab (M.W. 7) had purchased cloth worth Rs. 100 from his father's shop on credit and was repaying the amount by instalments of Rs. 10 to Rs. 20 per month and at times, the instalments used to be paid in his hands or to his father in the shop. He has

also admitted the transaction between himself and Channayappa (M.W. 4) but denied that he duped the latter. Then after reading Raghavachar's report (Ex. M. 1) he has stated :—

> "I say that none of the complaints made by Raghavachar in it, against me is true. Ex. M. 1 has been fabricated with false allegations for the purpose of this case and has been ante-dated. All allegations therein are false. Raghavachar has deposed falsely against me. I cannot say why Raghavachar has deposed falsely against me and has made the false report Ex.M. 1 against me."

Then with regard to promotion as Assistant Accounts Officer to which post Parthasarathy Reddy has been appointed, he has admitted that he had approached the Management with a request that either he or one of the other two clerks, who are all Commerce Graduates (B.Com.), should be promoted to that post, and in spite of it the Management appointed Parthasarathy Reddy, an outsider, who is also a Commerce graduate with no experience at all, like himself and the other two clerks.

28. He has admitted that one of his duties was to attend the Banks for verification of the financial position but denied that he was returning to office very late. He has stated that his returning to office always depended upon his work in the Banks.

29. If we now analyse the evidence, we find that Satyanarayana alone is not to be blamed for starting the chit fund. There were 12 employees in it. It was being run on a no gain and no loss basis. It may be that the employees used to pay their contributions to the fund in the office itself. It is natural also. No evidence has been led to show that Satyanarayana was harassing the employees to recover their contributions or was with-holding the contribution amounts from their salary, against their will. I do not find anything seriously wrong with Satyanarayana's transactions either with Channayappa or Mahaboob Sab. Such transactions are not very unusual in an office, where the employees are in the confidence of one another. The real question is whether Satyanarayana was really indifferent to his work or was not co-operating with his colleagues as stated by Raghavachar. On this point, the personnel officer Mr. Narasimha Iyengar (M.W. 1) has nothing to say. The Secretary and the Chief Executive Officer Mr. Olpherts Forrester (M.W. 5) has no personal knowledge about it. He has stated that the report Ex. M. 1 was accepted as correct and acted upon. Then it may be noted that the Union has not led any evidence even to infer *mala fides*, a spirit of victimisation or unfair labour practice or ulterior motives on the part of the Management in accepting the report Ex. M. 1 and acting upon it. The Management may have

been right or may have been wrong in accepting the report Ex. M. 1. This question can not be objectively approached or tested by this Court nor can it sit in judgment over that of the Management in accepting the report Ex. M. 1 or acting upon it. In my opinion, none of the circumstances mentioned in Tata Oil Mills case and Murugan Mills case are proved to exist in this case, to interfere with the termination order issued to Satyanarayana Iyer.

30. Now coming to the case of Subramanya, we find that there is no substance in his contention. He had tendered his resignation and he was told by the Management that it had been accepted. If he had been relieved forthwith, he would have no cause of action at all. But the Management was not in a position to relieve him. So, it appears that a fresh contract was entered into with him by the Management and a fresh order of appointment was issued to him, purely on a temporary basis, on a salary higher than what he was getting, by Rs. 70 per month. This order is Ex. M. 5. The Management has quite clearly and plainly informed him that the post was " temporary " and it would continue " until further orders". Subramanya has accepted the post subject to both of these conditions. In his letter Ex. M. 12 he has treated himself as having been appointing on temporary basis, and requested the Management to confirm him. He has admitted that the Management never informed him that he had been confirmed. The very tenure of his post was temporary and it was to continue till further orders. The Management has terminated his services, when Raghavachar submitted his report that he could carry on the work with the existing typists. The question of *mala fides* on the part of the Management does not arise in this case at all and no evidence also has been led to infer it. Hence there are no grounds for this Court to interfere with the order of the termination of his services.

31. Now I proceed to consider the case of Gulam Mohammad. His services have been terminated on the basis of the report Ex. M. 2, made by Mr. Chopra (M.W. 2). The only complaint made by Mr. Chopra against Gulam Mohammad in Ex. M. 2 is that in spite of his asking him (Gulam Mohammad) to join at Belagola, he did not do so. Mr. Chopra has recommended the transfer of Gulam Mohammad to another department or the termination of his services. In his deposition Mr. Chopra has stated :—

> " One of the clerks under me at Belagola resigned and went away. Hence I recommended to the Managing Director that Gulam Ahmed should be transferred to Belagola from Bangalore in the vacancy caused by the resignation of the other clerk. The Secretary passed orders transferring Gulam Ahmed from Bangalore to Belagola. Gulam Ahmed was asked to join at Belagola before the

> date mentioned in the order. He did not join. Thereafter, I made the confidential report Ex. M. 2."

In his cross-examination, Mr. Chopra has denied that he has fabricated the report Ex. M. 2 and ante-dated it. The Order of transfer referred to by Mr. Chopra in Ex. M. 2 has not been produced. The Secretary Mr. Olphers Forrester (M.W. 5) does not say anything in his deposition about the transfer order issued to Gulam Mohammad and his refusal or neglect in obeying it. The Personnel Officer, Narasimha Iyengar has stated :—

> "Gulam Mohammad was transferred to Belagola by an order passed on 18th May 1964. He was asked to join at Belagola on 20th May 1964..... Gulam Mohammad did not join at Belagola. So, he was continued in Bangalore office. Thereafter the Sales Manager, Mr. Chopra made the report Ex. M. 2 on 20th January 1965 against him. As Gulam Mohammad could not be absorbed in any other section, his services were terminated as per Ex. M. 7."

From this statement made by Mr. Narasimha Iyengar, it is clear that Gulam Mohammad was continued at Bangalore Office when he did not join at Balagola. The Management did not treat Gulam Mohammad as having refused or neglected to obey the transfer order. Mr. Chopra did not want Gulam Mohammad in his section or department, but Gulam Mohammad could not be absorbed in any other department. This was the reason for terminating his services. Gulam Mohammad has explained why he could not join at Belagola. Even in this case *mala fides* or a spirit of victimisation or unfair labour practice can be attributed to the Management.

32. Now I turn to the issues framed by me. It is true that the Bangalore Office of the Management has been registered under the Shops and Commercial Establishments Act, 1961. Even in such an establishment, which also falls under the definition of Industry, it can not be said that no industrial dispute can arise and such a dispute can not be referred for adjudication under Section 10 of the Industrial Disputes Act 1947. There are various decisions, which support this view. I refer to two decisions of our own High Court, reported in 1964(2) LLJ 280 (Bombay Indra Bhavan—*Vs*—Ramachandra Sastry) and 1966(2) Mys. L.J. 161 (The Management of M/s New Taj Mahal Cafe *Vs* Their Workmen). The provisions of the Industrial Disputes Act to apply to such establishments if the dispute raised is an industrial dispute as defined by the Industrial Disputes Act. In the case on hand the materials placed on record and the evidence led in the case clearly show that the present dispute is an industrial dispute. Hence I hold that it is governed

by the provisions of the Industrial Disputes Act and record my finding on the first issue against the Second Party Management.

33. Now coming to issue No. 3, we find that no charges have been made against Subramanyam. He had been appointed "temporarily" until "further orders" and he has been discharged. Hence this issue does not survive in his case. So far as Gulam Mohammad is concerned, it has not been proved that he refused or neglected to obey the transfer orders. There is no other charge against him. Hence I record my finding on this issue in the negative as far as he is concerned. Then with regard to Satyanarayana there are reasonable grounds to infer that he was indifferent to his work since there is no reason to reject the testimony of Raghavachar on this point. I record my finding in the affirmative only so far as this charge is concerned.

34. With regard to issue No. 2 my finding is that there were justifiable reasons for the Management to terminate the services of Satyanarayana Iyer. It is a case of discharge simpliciter on justifiable grounds. The termination of the services of Gulam Mohammad are not justified in view of the evidence discussed by me. The question whether the termination of Subramanya's services was or was not justifiable, does not arise at all.

35. Turning now to issue No. 5, we find that this Court can not ignore the provisions of the Shops and Establishments Act, even in deciding the Industrial dispute. This is the principle laid down by our High Court in Bombay Indra Bhavan Case (1964-2-LLJ 280).

36. So far as Satyanarayana Iyer is concerned, he is not entitled to any reliefs either under the Industrial Disputes Act or under the Shops and Commercial Establishments Act since he was been discharged on justifiable grounds.

37. Subramanya has been discharged because the Management found that it could carry on the work with the existing staff. In other words, he was found to be a surplus hand. It is a clear case of Retrenchment as defined by Section 2 (oo) of the Industrial Disputes Act, 1947. When he was discharged, he had put in more than one year of service, his service being counted from 15th July 1963, under the Order of appointment, at Exhibit M. 5. He has been discharged with effect from 1st February 1965. The length of his service wohld be 15 days in excess of one year and a half. Under Section 25-F (b) of the Industrial Disputes Act, the period shall have to be calculated as two years for the purpose of determining

the retrenchment compensation. Subramanya is therefore entitled to—

Rupees 250 one Month's pay in lieu of Notice.
Rupees 250 Retrenchment compensation for one month for two years of service.

Rupees 500 Total

Out of this amount, the Management has paid him Rs. 250 as Notice pay. Hence I award him the balance of Rs. 250.

38. Gulam Mohammad has served the Management from 25th October 1959 to 31st January 1965 and has been discharged with effect from 1st February 1965. He has completed five years of service. His discharge is not for any reasonable cause. Hence under Section 39 (3) of the Shops and Commercial Establishments Act, he is entitled to compensation. I award him a salary of five months as compensation on account of his discharges, since the Management is not willing to take him back in service, on the authority of the decision of our High Court in Bombay Indra Bhavan Case, instead of directing his reinstatement. The amount due to him would be :—

Rupees 168 Notice pay.
Rupees 840 Five month's salary as compensation.

Rupees 1,008 Total

Out of this amount, the Management has already paid him Rs. 168 as notice pay. Hence he is now entitled to get a sum of Rs. 840 only from the Management. I record my finding on issue No. 5 accordingly.

39. Gulam Mohammad has admitted that during the conciliation proceedings, the Management did offer to pay Satyanarayana Iyer, Subramanya and himself one month's salary as compensation for each completed year of service and they did not agree to accept it. Hence I record my finding on the sixth issue in the affirmative.

40. Coming to issue No. 7, I find that Saytanarayana Iyer can not be reinstated as he has been discharged on justifiable grounds and this order is not vitiated on any of the grounds mentioned in Tatas Oil Mills Case. Subramanya cannot be reinstated because his appointment itself was temporary and also because of the provisions

of the Shops and Commercial Establishments Act. Gulam Mohammad can not be reinstated on account of the provisions of the Shops and Commercial Establishments Act and in view of the decision of our High Court in Bombay Indra Bhavan's case. Hence I record my finding on the seventh issue in the negative.

41. Considering the entire evidence against Saytanarayana Iyer, I am of the view that his case requires to be considered with sympathy by the Management. I recommend to the Management to pay him such compensation as it deems fit, under the Shops and Commercial Establishments Act, which offer it had graciously made to him during the conciliation proceedings, provided he applies for it.

42. In view of these conclusions, I make the following Award.

AWARD

1. Reference is partly accepted.
2. The Management do pay Subramanya a sum of Rs. 250 as balance of retrenchment compensation.
3. The Management do pay a sum of Rs. 840 to Gulam Mohammad (also named as Gulam Ahmed) as compensation for the termination of his services.
4. The other demands made by the First Party Union on behalf of the three employees under Reference are rejected.
5. Parties do bear their own costs.

(P. T. KADKOL),
Presiding Officer,
Labour Court, Bangalore.

" COPY "

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Presiding Officer,
Labour Court, Bangalore.

APPENDIX

List of witnesses examined in this case on behalf of

1st Party.—

W.W. 1. Sri A. Satyanarayana Iyer.
2. Sri Subramanya.
3. Sri Gulam Mohammad.

2nd Party.—

M.W. 1. Sri K. Narasimha Iyengar.
2. Sri Y. N. Chopra.
3. Sri Raghavachar.
4. Sri Channarayappa.
5. Sri Olpherts Forrester.
6. Sri R. Mohammad Khan.
7. Sri Mohaboob Sab.

List of documents admitted in this case on behalf of

1st Party.—

Ex.W. 1. Termination Notice of W.W. 1.
2. Termination Notice of W.W. 2.
3. Letter of Management to W.W. 3.
4. Appointment Order of W.W. 1.
5. Office Order confirming W W. 1.
6. Increment letter issued to W.W. 1.
7. Increment letter issued to W.W. 1.
8. Increment letter issued to W.W. 1.
9. Increment letter issued to W.W. 3.
10. Certificate issued to W.W. 3.
11. Increment letter issued to W.W. 3.
12. Certificate issued to W.W. 3.
13. Letter of Management to the Union.

2nd Party.—

Ex.M. 1. Confidential Report of M.W. 3 against W.W. 1.
2. Confidential Report of M.W. 2 against W.W. 3.